SINGAPORE REPORTS

Teng Fuh Holdings Pte Ltd v The Collector of Land Revenue, Singapore

COURT OF APPEAL (SINGAPORE) – CIVIL APPEALS NO 9 OF 1987 & NO 86 OF 1985
LAI KEW CHAI, THEAN & CHUA JJ
22 AUGUST 1988

Land Law – Compulsory acquisition of land – Award by Collector of Land Revenue – Market value of land acquired – Value contained in conveyance or instrument of transfer – Questions of construction – Land Acquisition Act (Cap 152, 1985 Ed), s 33(5)(d) – Stamp Duties Act (Cap 312, 1985 Ed)

These two appeals, ie civil appeal no 9 of 1987 ('the first appeal') and civil appeal no 86 of 1985 ('the second appeal') were both heard together as they raised common questions of construction of s 33(5)(d) of the Land Acquisition Act (Cap 152, 1985 Ed) ('the Act'). In the first appeal the government acquired three lots of land under the Act. On 17 March 1979, the appellants in the first appeal ('the first appellants') were granted an option by Firestone to purchase three lots of land for $3.5 million. They later entered into a contract with the vendors dated 15 March 1982 and on 2 August 1982, the sale and purchase of the said lands was completed and the first appellants took a transfer, a conveyance and an assignment all dated 12 August 1982. These instruments of transfer, the total consideration of which was agreed to be $3.5 million (rounded up), were presented to the Commissioner of Stamp Duties. The consideration stated in them was accepted by the Commissioner for the purpose of assessing the stamp duties payable thereon. By a government gazette notification dated 26 February 1983, a declaration was made under s 5 of the Act that the lands of the first appellants were needed for a public purpose. The Collector of Land Revenue made an award dated 27 October 1983 in the sum of $3.5 million. The Collector acted under s 33(5)(d) of the Act. It was agreed that the value of the lands of the first appellants as at 30 November 1983 was $4.2 million. As the market value of the said lands as at the date of the said gazette notification, 26 February 1983, was far in excess of the market value as at 30 November 1973 of $4.2 million, it was accepted by all concerned that that market value was irrelevant for the purposes of this appeal. Not satisfied with the award of the Collector of Land Revenue, the first appellants appealed to the Land Acquisition (Appeals Board). The appeal was dismissed on the ground that the amount of compensation could not under s 33(5)(d) of the Act exceed the value which had been stated in the said conveyances and other instruments of transfer.

In the second appeal, the second appellant on 22 October 1980 took a conveyance of that date of the subject land at the price of $320,000 (or at $0.93 psf) pursuant to a purchase from the Official Assignee at the auction. The conveyance was duly stamped under the Stamp Duties Act. On 12 May 1982, the land was declared in a government gazette notification to be needed for a public purpose under s 5 of the Act. It was common ground that the market value of the acquired land as in November 1973 was $1.75 psf (or $601,269.49). As the agreed market value of the said land at the date of the publication of the declaration under s 5 of the Act was $2 psf and was therefore higher, it was agreed that this higher market value was irrelevant for the purposes of this second appeal. Claiming that s 33(5)(d) of the Act was applicable, the Collector of Land Revenue awarded the second appellant the sum of $320,000 as compensation. This award was affirmed by the Land Acquisition (Appeals Board) in an appeal by the second appellant.

Both appellants contended that s 33(5)(d) of the Act was not applicable to them because that section in clear and unambiguous terms provided that 'the market value of the acquired land *at the date of the statement* shall be deemed not to exceed the value' contained in the respective conveyances or other instruments of transfer which they took for their lands, ie 2 August 1982 in the case of the first appellants and 22 October 1980 in the case of the second appellant.

Held, allowing both appeals:

(1) The intention of the legislature is clearly reflected in ss 33(1)(a) and 33(5). Section 33(1)(a) prescribes three market values of the land acquired, namely: (i) the market value as at 30 November 1973, (ii) the market value as at the date of the publication of the notification under s 3(1) if the notification is within six months from the date hereof followed by a notification under s 5 in respect of the same land or part thereof, and (iii) the market value as at the date of the publication of the notification made under s 5, and provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the lowest of the three market values is to be adopted and taken into consideration.

(2) The Collector of Land Revenue and the Land Acquisition (Appeals Board) were in error in holding that the awards payable to both appellants were limited to the values stated in their respective conveyances or other instruments of transfer.

(3) Section 33(5)(d) was not in terms limited to only cases of any under declaration of value. Whether or not there was any under declaration, the value stated was intended to be an aid in determining the compensation payable. The ejusdem generis canon of construction is not applicable.

(4) The court was not satisfied on a balance of probabilities that by stating the consideration in the relevant conveyances or other instruments of transfer, which were significantly lower than the 30 November 1973 market value as agreed by the respondents, the appellants had stated or had with their knowledge or consent allowed to be stated the 'value' of their lands within the meaning of s 33(5)(d).

(5) The first appellants were awarded the sum of $4.2 million.

(6) The second appellant was awarded the sum of $601,269.49.

Case referred to

1 *Duport Steels Ltd* v *Sirs* [1980] 1 All ER 529 (refd)

Legislation referred to

Land Acquisition Act (Cap 152, 1985 Ed) ss 3(1), 5(1), (3), 33(1) (a), 33(5)(d)
Stamp Duties Act (Cap 312, 1985 Ed)

Laurence John Wee (Dora Cheok (Ms) with him) for the first appellants in Civil Appeal No 9 of 1987.

M Karthigesu (A Karthigesu with him) for the respondent in Civil Appeal No 9 of 1987.

Ng Kai Ming for the second appellant in Civil Appeal No 86 of 1985.

Joseph Hoo for the respondent in Civil Appeal No 86 of 1985.

Cur Adv Vult

Lai Kew Chai J: We heard together civil appeal no 9 of 1987 ('the first appeal') and civil appeal no 86 of 1985 ('the second appeal') as they both raised common questions of contruction of s 33(5)(d) of the Land Acquisition Act (Cap 152, 1985) ('the Act'). At the conclusion of the hearing, we allowed both appeals with costs, set aside the orders of costs below which were made against the appellants and ordered that the appellants in the first appeal ('the first appellants') be awarded the sum of $4.2 million and that the appellant in the second appeal ('the second appellant') be awarded the sum of $601,269.49. The latter award was based on the rate of $1.75 psf which the respondent agreed to if the appeals succeeded as a matter of construction. We now give our reasons.

The agreed facts

We set out separately the agreed facts of the two appeals. In the first appeal, three pieces of land known as lots 398, 348 and 350 of mukim 25, Geylang, containing an area of 9,746.3 sq m, were acquired by the government under the Act. On 17 March 1979, the first appellants were granted an option by Firestone (S) Pte Ltd to purchase the acquired lands for the sum of $3.5 million. For reasons not conveyed to us the first appellants, in spite of having exercised the option, entered into a contract with the vendors dated 15 March 1982. On 2 August 1982, the sale and purchase of the land was completed and the first appellants took a transfer, a conveyance and an assignment all dated 12 August 1982. These instruments of transfer, the total consideration of which was agreed to be $3.5 million (rounded up), were presented to the Commissioner of Stamp Duties in the Stamp Office under the Stamp Duties Act (Cap 312, 1985 Ed) and the consideration stated in them was accepted by the Commissioner of Stamp Duties for the purpose of assessing the stamp duties payable thereon.

By a government gazette notification dated 26 February 1983, a declaration was made under s 5 of the Act that the lands of the first appellants were needed for a public purpose. An inquiry was duly conducted under the Act and the Collector of Land Revenue made an award dated 27 October 1983 in the sum of $3.5 million. The Collector of Land Revenue acted under s 33(5)(d) of the Act. It was agreed that the market value of the lands of the first appellant as at 30 November 1973 was $4.2 million within the meaning of s 33(1)(a) of the Act. As the market value of the said lands as at the date of the said gazette notification, that is on 26 February 1983, within the meaning of s 33(1)(a) of the Act was far in excess of the market value as at 30 November 1973 of $4.2 million, it was accepted by all concerned that that market value was irrelevant for the purposes of this appeal. Not satisfied with the award of the Collector of Land Revenue, the first appellants appealed to the Land Acquisition (Appeals Board). The appeal was dismissed on the ground that the amount of compensation could not under s 33(5)(d) of the Act exceed the value which had been stated in the said conveyances and other instruments of transfer.

We now set out the agreed facts of the second appeal. On 22 October 1980 the second appellant took a conveyance of that date of the subject land at the price of $320,000 (or at $0.93 psf) pursuant to a purchase from the Official Assignee at an auction. The conveyance was duly stamped under the Stamp Duties Act (Cap 312, 1985 Ed). On 12 May 1982 the land was declared in a government gazette notification to be needed for a public purpose under s 5 of the Act. It was common ground that the market value of the acquired land as in November 1973, within the meaning of s 33(1)(a) of the Act, was $1.75 psf (or $601,269.49). As the agreed market value of the said land at the date of the publication of the declaration under s 5 of the Act was $2 psf and was therefore higher, it was also agreed that this higher market value was irrelevant for the purposes of this second appeal. Claiming that s 33(5)(d) of the Act was applicable, the Collector of Land Revenue awarded the second appellant the sum of $320,000 as compensation. This award was affirmed by the Land Acquisition (Appeals Board) in an appeal by the second appellant.

The statutory provisions

Before we turn to the submissions of both appellants, we should now set out the relevant provisions of the Act.

Section 5(1) states:

> Whenever any particular land is needed –
> (a) for any public purpose;
> (b) ...; or
> (c) ...,
> the President may, by notification published in the Gazette, declare the land to be required for the purpose specified in such notification.

Section 5(3) states:

> The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1).

Before we set out the relevant provisions of s 33 of the Act we should observe that by Act 2 of 1988, which came into force on 12 February 1988, the market value of any land acquired on or after 30 November 1987 shall be the market value as at 1 January 1986. These amendments were not relevant in these appeals. We therefore considered the statutory provisions before the amendments.

The relevant provisions of s 33 prior to the amendments were as follows:

> 33(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall, subject to subsections (2), (3) and (4), take into consideration the following matters and no others:

(a) the market value as at 30 November 1973, or the market value as at the date of the publication of the notification under section 3(1) if the notification is within 6 months from the date thereof followed by a notification under section 5 in respect of the same land or part thereof, or the market value as at the date of the publication of the notification made under section 5, whichever is the lowest;

...

(5) For the purposes of subsection (1)(a) –

...

(d) if any land in respect of which a value has been stated by or with the knowledge or consent of the owner thereof in any affidavit, return or other document required to be made or delivered to any public officer under the provisions of any written law and accepted by him at that value for the purposes of assessing the tax or duty payable thereon where the statement was made within two years of the date of the notification under section 5(1) in respect of the land, the market value of the acquired land *at the date of the statement* shall be deemed not to exceed the value therein contained;

(the underlining is ours)

Issues of construction

Both appellants before us contended, as they did before the Land Acquisition (Appeals Board), that s 33(5)(d) of the Act was not applicable to them because that subsection in clear and unambiguous terms provided that 'the market value of the acquired land *at the date of the statement* shall be deemed not to exceed the value' contained in the respective conveyances or other instruments of transfer which they took for their lands. Their counsel submitted that the critical words, namely, 'at the date of the statement', therefore meant and could only mean the market values of their respective lands at the respective dates of their conveyances, namely, 2 August 1982 in the case of the first appellants and 22 October 1980 in the case of the second appellant, and that since neither of these dates fell on 30 November 1973 within the meaning of s 33(1)(a) of the Act it was an error of interpretation on the part of the Collector of Land Revenue and the Land Acquisition (Appeals Board) to have deemed, as they did, that the market value of their lands shall not exceed the consideration or prices stated in their respective conveyances or other instruments of transfer.

It was fairly admitted by counsel for both appellants that their interpretation of s 33(5)(d) had the effect of limiting the scope of operation of the subsection to only those cases where the dates of the statement coincided with any of the three dates on which the market values of acquired lands shall be taken into consideration under s 33(1)(a) of the Act. They also fairly conceded that in reality such coincidences of the relevant dates would be rare. However, they stressed that 'if the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there (was) no need to look elsewhere to discover their intention or their meaning': quoting from 44 *Halsbury's Laws of England*, 4th Ed, para 857.

Counsel for the first appellants emphasized that it was the duty of a court to give effect to an enactment which is grammatically capable of one meaning only and that it was no part of a court's function on any perceived policy consideration to ignore or delete plain words in a statute to find an ambiguity when, as in these appeals, there was none. Counsel relied on *Duport Steels Ltd* v *Sirs*[1] where Lord Diplock said at p 541:

> Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.

In reply counsel for the respondent in the first appeal frankly admitted that the critical words, namely, 'at the date of the statement', did qualify or limit, albeit unwittingly, the market value referred to in s 33(5)(d) of the Act and that it was a piece of poor draftsmanship. He contended that by that subsection it was tolerably clear that Parliament had intended to provide that where the value of any acquired land had been stated within a specified period by or with the knowledge or consent of its owner in writing of the type described pursuant to any written law to a public officer who accepted that value for the purposes of assessing the tax or duty payable thereon the market value to be fixed as compensation for its acquisition should not exceed the value so stated. He further pointed out that it could not have been the intention of Parliament that the operation of the subsection should be drastically confined to the market value 'at the date of the statement'.

We rejected the argument of counsel for the respondent. We do not find any ambiguity in s 33(5)(d); nor do we agree that there was an error in the drafting of para (d) by the presence of the words 'at the date of the statement'. In our opinion, the intention of the legislature is clearly reflected in ss 33(1)(a) and 33(5). Section 33(1)(a) prescribes three market values of the land acquired, namely: (i) the market value as at 30 November 1973,(ii) the market value as at the date of the publication of the notification under s 3(1) if the notification is within six months from the date hereof followed by a notification under s 5 in respect of the same land or part thereof, and (iii) the market value as at the date of the publication of the notification made under s 5, and provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the lowest of the three market values is to be adopted and taken into consideration. The provisions of s 33(5) are an aid to s 33(1)(a): they set out the factors enumerated in paras (a) to (f) which are to be disregarded or taken into account, as the case may be, in assessing the market values under s 33(1)(a).

Paragraph (d) of s 33(5) sets out a relevant factor which must be taken into account if the fact as stated therein occurs. Briefly, if a statement as to the value of the land acquired has been made in the circumstances described in para (d), then that value so stated is relevant and aids in assessing the market values under s 33(1)(a) in this way: the market value of the land at the date of the statement is deemed not to exceed that value. Needless to say, the market value of land fluctuates from time to time; at that date it could or may be less than the stated value, but by the operation of s 33(5)(d) it cannot be more. That statement has the effect of limiting the market value of the land as of that date, and precludes the owner or other interested party from claiming that, notwithstanding the statement, the market value at that date was more than that stated in the statement. It is true that construed in this manner para (d) of s 33(5) has a limited operation, but the same is true of all the other paragraphs, namely, (a), (b), (c), (e), and (f) of s 33(5). Whether any of these paragraphs applies in aiding the assessment of the market values of the land under s 33(1)(a) depends on whether the contingency stated there has occurred. Paragraph (d) of s 33(5) is not intended to substitute the relevant market value under s 33(1)(a).

In both the appeals, the market values of the lands as at 30 November 1973 were agreed upon. It was also agreed that the market values as at the date of the notification made under s 5 were higher. The parties therefore had assessed and determined these market values. In consequence, assuming that the considerations as stated in the conveyances and instruments of transfer represented the values as at the respective dates, these values must be deemed to have been taken into account by the parties concerned and assisted them in arriving at the market values as at 30 November 1973 and as at the date of the notification. In the result, the Collector of Land Revenue and the Land Acquisition (Appeals Board) were in error in holding that the awards payable to both appellants were limited to the values stated in their respective conveyances or other instruments of transfer.

We now turn to an alternative construction of s 33(5)(d) which was canvassed only on behalf of the second appellant. It concerned the words 'other document' in s 33(5)(d). Counsel for the second appellant submitted that the second appellant had purchased the land in an auction from the Official Assignee and that therefore there could be no question of any under declaration of the value or consideration paid for the land. It was further pointed out that the consideration stated in the conveyance was not stated by or with the knowledge or consent of the second appellant. Finally, it was observed that an affidavit or a return referred to in the subsection and which preceded the words 'or other document' were in nature the kind of documents which were unilaterally made by one party and that applying the principle of ejusdem generis the expression 'other document' could not as a matter of construction include a conveyance which arose as a result of a bilateral agreement.

We rejected these submissions. The subsection was not in terms limited to only cases of any under declaration of value. Whether or not there was any under declaration, the value stated was intended to be an aid in determining the compensation payable. As to the application of the canon of construction expressed in the Latin phrase ejusdem generis which means 'of the same kind', what this requires is that where general words follow an enumeration of particulars the general words are understood as limited to general categories of the same general kind as the particulars. As the 'affidavit' or 'return' does not belong to any general category, this canon of construction has no application at all.

Finally, we would now consider another aspect of the construction of s 33(5)(d) of the Act. In the course of argument, we observed that it did not appear to us that the consideration or price paid for the purchase of land and as expressed in a conveyance or other instruments of transfer was necessarily the 'value' of his land for the purposes of s 33(5)(d); nor could the purchaser be inevitably regarded as accepting it as such. We observed that not every consideration stated in a conveyance reflected the 'value' of the land so far as the purchaser was concerned. What prompted us to make the observation was the undisputed fact that in both appeals the prices paid for by both appellants were significantly lower than the market values of their lands years earlier on 30 November 1973, as was agreed by the respondents. On these evidence, the inescapable conclusion was that both appellants had acquired their lands at bargain prices many years after 30 November 1973 and it seemed to us quite unwarranted on the evidence to assume, as was done in these cases, that by the consideration stated in their conveyances or other instruments of transfer both the appellants were stating the 'value' of their lands within the meaning of s 33(5)(d). We understood both appellants to have adopted this view of the evidence and they contended that both appellants did not state or permit to be stated with their knowledge or consent the 'value' of their lands within the meaning of s 33(5)(d).

In reply, counsel for the respondents could only say that the use of the word 'value' was again either inapt or the subsection should have included some form of words to cover the consideration or price stated in a conveyance or other instruments of transfer. Counsel, of course, pointed out that the appellants had tendered their conveyances or other instruments of transfer for purposes of stamping under the Stamp Duties Act. In our view, the act of tendering the conveyances for stamping was quite neutral and innocuous and such tender could not amount

to representing or allowing to be represented the 'value' of the land in question for the purposes of the subsection. Such tender for stamping was to pay the ad valorem stamp duty for the consideration paid and there was the process of adjudication under the Stamp Duties Act if the consideration stated was considered to be inadequate. In the end, we came to the conclusion that in these appeals we were not satisfied on a balance of probabilities that by stating the consideration in the relevant conveyances or other instruments of transfer, which were significantly lower than the 30 November 1973 market values as agreed by the respondents, the appellants had stated or had with their knowledge or consent allowed to be stated the 'value' of their lands within the meaning of s 33(5)(d).

For the reasons stated above, we allowed both the appeals and made the orders we did.

Order accordingly.

Solicitors: *Wee Ramayah & Partners*; *Cooma Lau & Loh & M Karthigesu*; *PK Wong & Co*; *Joseph Hoo Morris & Kumar*.

Reported by *Wong Kim Fatt*

Lim Cheng Wai v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE'S APPEAL NO 139 OF 1987
WEE CHONG JIN CJ
1 SEPTEMBER 1988

Criminal Procedure – Sentencing – Whether fine of $300 and order of disqualification for permitting another person to use motor vehicle without insurance cover is manifestly excessive – Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed), s 3(2)

Road Traffic – Motor insurance – Whether there is insurance policy in relation to use of motor vehicle – Interpretation of policy provisions

Insurance – Motor insurance – Whether there is insurance policy in relation to use of motor vehicle – Interpretation of policy provisions

The appellant was charged with an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed) and was convicted. Section 3(1) states that 'it shall not be lawful for any person ... to ... permit any other person to use a motor vehicle unless there is in force in relation to the use of the motor vehicle by ... that other person ... such a policy of insurance ... in respect of third-party risks as complies with the requirements of this Act'. The appellant had permitted B to use a school bus to ferry adult passengers. At that time, he did not possess an Adult Workers Contract Permit and was therefore not licensed to carry adult passengers under r 41 of the Traffic (Public Service Vehicles) Rules 1976. The sole issue in this appeal is whether there was a policy of insurance in force in relation to the use of the bus at the material time.

Held, dismissing the appeal:

(1) On a consideration of the material provisions of the insurance policy, namely, the 'limitations as to use' clause and memo B, the policy does not cover the use of the vehicle at the time of the offence. The magistrate was right in convicting the accused.

(2) The sentence imposed, ie a fine of $300, is not manifestly excessive. As regards the order of disqualification, there are no special reasons on the facts of the case not to impose an order that the appellant be disqualified from holding or obtaining a driving licence in respect of class 4 vehicles for a period of 12 months.

[*Obiter*: The court made some observations on the submissions advanced by counsel for the appellant. The appellant contended that the failure to obtain the Adult Workers Contract Permit amounted only to a breach of the policy which rendered it voidable at the option of the insurers. The court held that the argument overlooked a fundamental distinction which must be drawn in all such cases falling under s 3(1). First, the trial judge must determine whether, as a matter of construction, the policy covers the use of the vehicle at the material time. Secondly, if upon its true construction, the policy covers the use of the vehicle in question, the policy may yet be voidable at the option of the insurers, eg on the ground of misrepresentation. However, such a policy will remain a policy in force unless the policy had in fact been avoided in accordance with s 9(4) of the Motor Vehicles (Third-Party Risks and Compensation) Act.]

Cases referred to
1 *PP* v *Albert See* [1971] 1 MLJ 47 (folld)
2 *Leggate* v *Brown* [1950] 2 All ER 564 (refd)
3 *Kerridge* v *Rush* [1952] 2 Lloyd's Rep 305 (refd)
4 *Durrant* v *Maclaren* [1956] 2 Lloyd's Rep 70 (refd)

Legislation referred to
Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed) ss 3(1), (2), 9(4)
Traffic (Public Service Vehicles) Rules 1976 r 41
Road Traffic Act 1930 [UK] s 35

M Rajaram for the appellant.
Loke Yoon Kee (Deputy Public Prosecutor) for the Public Prosecutor.

Cur Adv Vult

Wee Chong Jin CJ: The appellant was charged with an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Ed).

Section 3(1) reads as follows:

> Subject to the provisions of this Act, it shall not be lawful for any person to use or to cause or permit any other person to use a motor vehicle unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risk as complies with the requirements of this Act.

The appellant claimed trial to the charge. He was convicted and sentenced to a fine of $300 and disqualified from driving class 4 motor vehicles for a period of 12 months.

The facts are not in dispute. On 26 July 1985, the appellant permitted one Quek Wee Beng to use a school